* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **Crl. M.C. No. 6638/2006**

% Date of Decision: 5th December, 2007

\# **Rajni Bhargava** .....Petitioner

! Through Mr. Vijay Aggarwal, Advocate

versus

$ **The State of NCT of Delhi & Anr.** ...Respondents

^ Through Mr. M.N. Dudeja, APP for State.

Mr. Gagan Minocha with Mr. Abhineet Gulati, Advocates for the complainant

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K. BHASIN, J:

This petition is filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 for setting aside of the order dated 04.06.2004 passed by the Metropolitan Magistrate during the pendency of a criminal case arising out of FIR

no. 263/2003 registered at police station Alipur on 02.08.2003 under Sections 381/420/408/120-B I.P.C. against the petitioner and her husband at the instance of respondent no. 2 whereby application of the State for attaching some immovable properties of the petitioner was allowed.

2. Briefly stated, facts of the case leading to the filing of the present petition are that complainant Company (M/s Sun Star Overseas Ltd.) had employed the husband of the petitioner for obtaining the DEPB(duty entitled pass book) licenses in the name of Company and selling them in open market on behalf of the Company (M/s Sunstar Overseas Ltd.) at the prevailing market price. Husband of the petitioner had allegedly stolen some licenses and sold them in open market at an inflated price to the firms owned by himself and the petitioner herein and had misappropriated the amount of the Company to the tune of Rs. 32 Lacs. On a criminal complaint being filed in Court the Metropolitan Magistrate passed an order under Section 156(3) Cr.P.C. The police investigated the matter and upon investigation filed a charge-sheet in the concerned court against one Adesh Mohan. The petitioner and her husband were kept in column no. 2 of the charge-sheet. Thereafter on 22.05.2004 the Investigating Officer moved an application in Court for attachment of one residential house and one plot of the petitioner alleging that her husband in his disclosure statement had disclosed that he had purchased the house and the plot in the name of his wife out of the misappropriated money of the complainant. The learned Metropolitan Magistrate on 03.06.2004 ordered placing

of the case file with that application on 4-6-2004 and on 04.06.2004 on the application itself passed an order like this:

"Heard, application allowed in the interest of justice."

Thereafter the investigating officer sealed the two properties and as a result of sealing of the residential house the petitioner and her family got dispossessed from that house on 07.06.2004.

4. Aggrieved by the said order dated 04.06.2004 the petitioner has filed this petition. Learned counsel for the petitioner submitted that after filing of the challan in the Court the police has no power to seal any property and that in any case no notice of the attachment application was given to the petitioner-accused by the learned Metropolitan Magistrate and he passed the impugned order ex-parte. It was also contended that even otherwise simply because the petitioner's husband had in his alleged confessional statement claimed that he had purchased the two properties in her name out of the misappropriated amount the Magistrate was not justified in ordering attachment when the State was not claiming that in fact those properties were purchased from misappropriated amount. Finally, it was submitted that the properties in any case could not be sealed and the petitioner could not be dispossessed from her house like that and so she should be restored back the possession. Learned counsel further submitted that if the petitioner is given back the possession of the two properties which have been sealed by the police she would neither part with the possession of those properties nor would she create

any third party interest in those properties.

5. Learned counsel for the respondent no. 2, however, supported the impugned order of the learned Metropolitan Magistrate and submitted that the Magistrate had the power under Section 105 (c) (1) of Cr.P.C. to attach the properties which are suspected to have been obtained by the accused through 'proceeds of crime'. Learned APP for the State also supported the impugned order, but half heartedly.

6. I have given my due consideration to the rival submissions of the parties and have come to the conclusion that this petition deserves to be allowed on the short ground that the application moved by the State for attachment of properties was allowed by the learned Metropolitan Magistrate without giving its notice to the accused (petitioner herein) which the Magistrate should not have done. The order which he passed had serious consequences and so the least which should have been done by the Magistrate was to give a chance to the accused to file reply and to argue the matter before the disposal of that application. Even the haste shown by the learned Magistrate in passing the impugned order immediately on filing of the attachment application appears to be unjustified in view of the fact that in the attachment application itself it was not even averred that the petitioner was intending to dispose of the two properties and to avoid that some urgent order needed to be passed. In this view of the matter, other points viz. whether Magistrate has powers to attach any property during the trial when the police itself had not seized any property during investigation and whether after attachment

order passed by the Court the police can dispossess the occupant and seal the property need not be gone into by me.

7. In view of the above, this petition is allowed and the matter is remanded back to the trial Court with directions to take up the attachment application afresh after issuing notice to the accused (petitioner herein). The SHO concerned is directed to restore back to the petitioner-accused possession of property bearing no. A-3/65, Sector-15, Rohini, Delhi-85 and plot no. 37, Khasra No. 103/7, Rajiv Nagar, Phase-II, Begam Pur, Delhi within four days. It is, however, also directed that the petitioner shall not transfer or create any third party interest in the two properties without the prior permission of the trial Court.

December 5, 2007 **P.K.BHASIN, J**
sh